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Addressing Violence against Indigenous Women and Girls as a Human Rights Issue

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Theme 1: Addressing Violence Against Indigenous Women and Girls as a Human Rights Issue

Introduction

In general terms, violence against indigenous women and girls can be discussed in two interrelated categories: interpersonal and structural violence. While direct physical, sexual and psychological violence are the most severe manifestations of the oppression of indigenous women, they cannot be fully understood unless analyzed as part of the larger framework and ideologies of domination. Indigenous women are confronted with violations of their personal integrity and human dignity in the form of sometimes extreme physical and sexual violence (including prostitution and trafficking). They face violations of their civil and political rights when they are marginalized or excluded from their communities and their membership denied. They encounter abuses of their economic and social rights in the intersections of racism, sexism, poverty, and discrimination, which lead to a lack of employment and educational opportunities, and access to health care and social services. Indigenous girls also face rights violations on multiple levels: as children in an adult world and as girls in a patriarchal world. The UN Inter-Agency Task Force on Adolescent Girls has identified indigenous girls as one of groups at particularly high risk of human rights abuses. Fundamentally, violence against indigenous girls is “related to the same norms and practices that cause violence and discrimination against women.”¹

This paper argues that the way in which indigenous women’s rights are often constructed as belonging only to specific “interest groups” is problematic, lending itself to arguments for and explanations of cultural differences rather than human rights. If we conceive of both indigenous peoples’ rights and indigenous women’s rights as human rights existing in a continuum—rather than separating them into different categories such as gender equality rights and political rights—it is possible to develop a framework to address violence against women that does not regard the violence as only a criminal or social concern, nor does it separate the issue from the question of indigenous self-determination.

1. Analysis of international human rights standards that could be applied to advancing the rights of indigenous women and girls

Women's rights have been formally codified as human rights in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979).² Indigenous peoples' human rights have been codified in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), which, unlike CEDAW, is not a binding treaty. In spite of the adoption of these two key international human rights instruments, indigenous women's rights remain a contentious and often neglected issue at international, domestic and local levels, including in indigenous communities.

It has been argued that violence against indigenous women is a good example of "the failings of a compartmentalized approach to human rights."³ This is most evident in approaches that view indigenous women's individual rights as distinct or at odds with indigenous peoples' collective rights of self-determination. Instead of such a divisive approach, it is imperative to recognize how "[s]ystematic violations of the collective rights of Indigenous peoples put the rights of individual Indigenous women at risk"⁴ and to find ways to understand how individual and collective rights "interact in the concrete experience of those whose rights are most frequently violated."⁵

It has been suggested that the global human rights discourse can create an effective framework to deal with violence against indigenous women when combined with local programs and initiatives.⁶ However, in order to do so, there are several serious obstacles that must be overcome, such as complicated enforcement mechanisms, lack of accessibility, and a general unfamiliarity of the formal, legalistic paradigm of the international human rights framework. In spite of these challenges, it is argued that the human rights instruments and programs have a potentially transformative capacity to eliminate violence against indigenous women. In order to realize that potential, however, there is a need for a human rights discourse that has the capacity to recognize and encompass specific circumstances, multiple identities and multiple agendas, and to develop a nuanced articulation of rights.⁷

In Canada, Amnesty International has employed a human rights framework for its campaign on violence against indigenous women in order to contribute to a fuller understanding of an issue that is often considered either a criminal or social concern. Research conducted by Amnesty International demonstrates that violence experienced by Indigenous women gives rise to human rights concerns in two central ways: "First is the violence itself and the official response to that violence. When indigenous women are targeted for racist, sexist attacks by private individuals and are not assured the necessary levels of protection in the face of that violence, a range of their fundamental human rights are at stake."⁸ Second, there are a number of factors placing indigenous women at an increased risk of violence which involve fundamental human rights provisions. These include various policies and practices stemming from the Indian Act.⁹

When considering the applicability of CEDAW to the high levels of gendered, racialized violence against indigenous women in Canada and beyond, particularly relevant articles include Article 2, which calls for adoption of legal and other measures to end discrimination against women by public authorities and institutions; Article 3, which urges states take measures to guarantee the full development and advancement of women; Article 5 on achieving the elimination of prejudices and the assumed inferiority of women¹⁰; and Article 6 on ending trafficking in women and exploitation of prostitution of women.

While not specifically considering violence against indigenous women, an analysis of employing CEDAW to end discrimination against Māori women in New Zealand sheds light on the question of the relevance of international human rights instruments to indigenous women.¹¹ The analysis distinguishes two categories of discrimination, internal and external. Internal discrimination stems from and is experienced in customary Māori contexts and external discrimination refers to that caused by sexist and colonial laws and practices. It examines particularly the effectiveness of filing a discrimination complaint under the Optional Protocol of the Convention, noting that it can be “potentially very valuable for Māori women seeking to . . . eliminate discrimination against women in political and public life.”¹² However, there are also potential drawbacks in pursuing an external discrimination complaint:

[T]here is no guarantee the New Zealand government will accept the recommendations [of the CEDAW Committee] in the current political climate. The government has a poor record of recognizing and protecting Māori rights and interests generally. In light of this, it is unlikely to be motivated to take steps to protect Māori women in particular from state-imposed discrimination, even though adverse attention from the Women’s Committee is likely to cause embarrassment.¹³

When it comes to internal discrimination in Māori customary contexts, Johnston argues against pursuing a complaint under international human rights instruments, for they “are not the right places to remedy discriminatory cultural practices that are arguably sourced in tikanga Māori [i.e., customary law].”¹⁴ The more appropriate place for solving internal disputes is the marae or the Māori meeting place. However, Johnston also recognizes the problem of leaving disputes unresolved, especially in internal discrimination cases involving Māori women who might feel silenced or alienated in their own communities and as a result, withdraw from participating in marae affairs. Further, while international human rights instruments might not be appropriate places to remedy discriminatory cultural practices, as Johnston argues, there is a need for caution when using culture as a justification for certain sets of rights and not others.¹⁵

Johnston’s analysis is also applicable in other contexts. Indigenous women pursuing a discrimination complaint under the CEDAW and the Optional Protocol would, in great likelihood in most countries, face similar challenges of governments not

responding or agreeing to the recommendations by the CEDAW Committee. With regard to resolving internal discrimination internally, many indigenous communities lack (often as a result of colonial history) their own dispute resolution mechanisms. Hence, indigenous women may be further marginalized in their communities.

In addition to CEDAW, the UN Declaration on the Elimination of Violence against Women (1993) and the Declaration of Belém do Pará (1994) are important international mechanisms in protecting the human rights of indigenous women and girls. Particularly relevant in this regard is Article 4 of the UN Declaration on the Elimination of Violence against Women, which, *inter alia*, calls on states to:

- (c) “Exercise due diligence to prevent, investigate, and ... punish acts of violence against women”;
- (e) “Consider the possibility of developing national plans of action to promote the protection of women against any form of violence”;
- (f) “Develop, in a comprehensive way, preventive approaches ... and ensure that the revictimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions”;
- (g) Ensure access to “treatment, counseling, and health and social services, facilities and programmes, as well as support structures”;
- (i) “Take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women”;
- (k) “Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women and encourage research on the causes, nature, seriousness and consequences of violence against women and on the effectiveness of measures implemented to prevent and redress violence against women; those statistics and findings of the research will be made public”; and
- (l) “Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence.”

These measures reflect and reiterate key recommendations made by organizations addressing violence against indigenous women and girls. With regard to the Declaration of Belém do Pará, Articles 7, 8 and 9 articulate similar rights as CEDAW Article 4, above, and thus are relevant to this issue. There are also useful examples where international standards such as the CEDAW and the Declaration of Belém do Pará have been successfully applied by national and international courts to cases of gendered violence.¹⁶

As the most comprehensive mechanism addressing the human rights of indigenous peoples to date, the Declaration on the Rights of Indigenous Peoples is one of the fundamental documents in addressing gendered violence against indigenous women and girls. It could be argued that successful implementation of the UNDRIP will, at least

partly, be measured by its capacity to address the collective and individual rights of indigenous women. Survival, for indigenous women, is both an individual and collective matter. If women are not surviving as individuals in their communities due to physical or structural violence, in such circumstances collective survival as a people is also inevitably jeopardized.

For indigenous women, self-determination is crucial both at individual and collective levels. Individual self-determination is considered a condition for meaningful and strong collective self-determination.¹⁷ Therefore, the implementation of indigenous self-determination needs to occur in tandem with addressing violence against women and girls. This means that combating gendered violence must start within indigenous communities, which includes eliminating interpersonal physical, sexual and psychological violence, but also necessarily replacing government policies that have displaced indigenous women from their communities. If such an approach were taken, indigenous women would not be forced to leave their communities when escaping violence at home. Once displaced from their communities and away from their families, indigenous women and girls are often even more vulnerable to violence and exploitation. In short, the indigenous political discourse regarding self-determination would be more applicable and relevant to indigenous communities if it developed a perspective of individual self-determination. Eventually, such a perspective is required to move collective self-determination beyond rhetoric to a significant and practical political project that engages indigenous people and is deliberately inclusive of indigenous women.¹⁸

Therefore, the implementation of the UNDRIP must, from the outset, incorporate indigenous women's rights as an inextricable part of the process. When implementing the Declaration, governments, courts and human rights tribunals need to ensure that indigenous women's rights are foregrounded and upheld without discrimination. Interpreting indigenous human rights and related state obligations must everywhere include a gender perspective in order to ensure that indigenous women's human rights are not left to be considered "later," as is sometimes suggested by indigenous male leadership. Negligence in addressing indigenous women's human rights simultaneously with political self-determination will not only result in setting indigenous women back potentially for years, but also in non-viable and unsustainable forms of indigenous self-determination.¹⁹ Those indigenous peoples and institutions currently using the Declaration as a framework for advancing their rights and for their own policy and decision-making or developing their own constitutions, need to uphold and guarantee indigenous women's rights and eliminate any existing policies or structures that can be considered discriminatory towards indigenous women at community, local or national levels. Furthermore, the international movement for indigenous self-determination must take the problem of violence against women seriously and include it as an inseparable part of its discourse and indigenous human rights advocacy.

2. Analysis of how the rights and priorities of indigenous women and girls may differ from the rights and priorities of non-indigenous women and girls

Indigenous women and their organizations have criticized mainstream approaches to violence against women for being too restrictive or for failing to take indigenous peoples' realities and specific circumstances into account. For example, the Beijing Platform for Action (1995) was critiqued by many indigenous women for its "overemphasis on gender discrimination and gender equality which depoliticizes issues confronting Indigenous women."²⁰ There is also a general lack of recognition of the ways in which "Indigenous women commonly experience human rights violations at the crossroads of their individual and collective identities."²¹ Environmental pollution and the destruction of ecosystems are good examples of such violations, as they undermine indigenous peoples' control of and access to their lands and resources, and often compromise women's ability to take care of their children and families due to health problems, contamination, displacement, and increased violence. This section argues that while there is a need to pursue a human rights framework that addresses gender-specific human rights violations in such a way that does not disregard the legacies and ongoing practices of colonialism, separating the question of violence against indigenous women from the broader framework of gendered violence may be unnecessary and even counterproductive.

In its report, the International Indigenous Women's Forum (FIMI) seeks to develop an indigenous conception of violence against women in order to generate concrete and effective strategies to address the widespread problem.²² The report considers six broad categories of violence against indigenous women: neoliberalism and development aggression, violence in the name of tradition, state and domestic violence, militarization and armed conflict, migration and displacement, and HIV/AIDS. Under its category of violence in the name of tradition, the report challenges the arguably inherent tension between universal human rights standards and local cultural practices, maintaining that "it is not 'culture' that lies at the root of violence against women, but practices and norms that deny women gender equity, education, resources, and political and social power."²³ This echoes the criticism by indigenous feminist scholars who have pointed out that traditions (including those respecting women) do not necessarily protect women's individual rights or advance women's leadership but instead, have been employed to re-inscribe domination and patriarchal structures.²⁴ Cultural practices and customary contexts are contested sites, characterized by systems of power relations and internal hierarchies of gender and status.

In a closer examination of its categories of violence against indigenous women, however, it is possible to detect a potential weakness in the framework for understanding

violence against indigenous women advanced by the FIMI report. Many of the manifestations of violence discussed by FIMI are not gender-specific in the sense that women are not specifically targeted by these forms of violence. Yet women may (and often do) carry the disproportionate burden of the effects of these forms of violence due to their reproductive capacity and roles as primary caretakers of the children and families. In other words, the FIMI analysis conflates gendered *forms* of violence with gendered *effects* of more general forms of violence that target indigenous communities as a whole, rather than specifically indigenous women. This paper argues that making this distinction (gendered forms vs. gendered effects of violence) is critical if we are to produce effective strategies to address *gender-specific forms of violence* against indigenous women.

Therefore, instead of developing an “indigenous conception of violence against women,” there is a need for a framework that accounts for the various levels at which indigenous women face violence or are rendered vulnerable to abuse and exploitation. Such a framework consists of three interrelated dimensions: domestic violence, violence rooted in systemic gendered racism in society, and state violence. Patriarchal societal practices of rendering domestic physical, sexual and psychological violence against women as private (and thus relegating women’s rights to a secondary position) also affect indigenous women. However, indigenous women often face additional barriers in their attempts to report violence to authorities or press charges against perpetrators. Because they are already marginalized and vulnerable and because of prevailing and common racist and sexist attitudes (including among authorities), their calls and concerns are often downgraded, devalued, or dismissed. A framework of interlocking forms of gendered violence allows us to systematically analyze the ways in which the different levels of violence interact with one another and to develop concrete and effective strategies to address gendered violence. By focusing on only one of the interrelated dimensions of gendered violence, we inevitably limit our ability to get a complete picture of the multiple contexts and mutually reinforcing mechanisms which render indigenous women vulnerable.

Recognizing the greater likelihood of all women being rendered vulnerable to abuse and exploitation does not imply imposing the notion of a common women’s identity based on universal interests and goals. Nor does it mean considering violence against indigenous women solely through a gender lens. However, in order to develop concrete and effective strategies to address violence against indigenous women, there is a need to recognize that while women’s experiences and conceptions of gender can be very different in different cultures and societies (but also *within* their own communities), women have much in common globally.²⁵ It has been noted that “employing generalizations of women’s experience does not imply a common viewpoint among women nor posit homogeneity” but it “does presuppose that patriarchal social relations have systematic social consequences and that mapping such consequences is valuable for corrective as well as constructive purposes.”²⁶ As has been documented in other contexts,

extensive or exclusive focus on (cultural) differences often gives rise to the denial of women's human rights.²⁷

Ultimately, if we conflate gendered forms and effects of violence, we lose the focus of self-determination as an indigenous women's issue and a gender justice issue. If indigenous self-determination is primarily a question of survival as distinct peoples, this survival must necessarily include women. Therefore, the following two, related arguments can be made: first, gender justice cannot be omitted from any discussion or project of indigenous self-determination, and second, when it comes to violence against indigenous women, we must focus first and foremost on gendered *forms* of violence. This does not mean that manifestations of violence against indigenous peoples that disproportionately affect women in indigenous communities (such as those discussed by the FIMI report) are not an issue. Rather, an excessive emphasis on cultural differences diverts attention from some of the most pressing concerns and frustrates efforts toward gender justice in indigenous communities.

Instead of extensively focusing on differences between indigenous and other women, this paper suggests that there is an urgent need to examine and confront the underlying structural factors that lead to violence against indigenous women and girls. While providing support services and intervention programs is necessary, it is imperative to address the problems that stem from the historical and contemporary dispossession of indigenous peoples. Assimilation and other colonial policies have resulted in the loss of traditional territories and resources and therefore, the loss of ability to practice traditional economies and other land-based activities. This, in turn, has led to the loss of culture and a disruption in gender regimes. The consequences of these changes include a sense of powerlessness, anger, humiliation and insecurity; which gives rise to substance abuse and increased levels of physical and sexual violence.²⁸ In other words, the lack of recognition of indigenous land and resource rights results in a limited ability to practice (or the outright demise of) traditional economies, to which indigenous peoples' cultures are inseparably linked. This creates a cycle of oppression that makes communities more vulnerable to family violence.²⁹

Examining the effects of patriarchy in indigenous societies needs to form a part of considering the legacies and ongoing practices of colonialism. Preliminary research into violence against Sami women in the Nordic countries indicates the prevalence of two interconnected concerns: first, that extended families often protect the male perpetrators of violence rather than support female victims of violence; and second, that inter- and intra-familial relations and obligations can form barriers to acknowledging and addressing violence against women and girls. Women's and girls' accounts of physical or sexual violence are not taken seriously and/or victims are blamed for the violence they have experienced. In some communities, there is a heavy emphasis on maintaining good relations within and between extended families, sometimes at the cost of individual well-being. This results in an overall situation in Sami society where discussing gendered

violence is largely considered a taboo. However, there is a broadly shared view that this taboo needs to be challenged. Therefore, starting a public dialogue is the first step in addressing violence against women and girls in Sami society.³⁰

Another example of the legacy of colonialism in many indigenous communities is the intergenerational cycle of violence which, for example, results in a situation where “[m]any victims and perpetrators of violence lack a basic understanding of what constitutes a healthy or loving relationship.”³¹ Another consequence of intergenerational lateral violence is normalization of sexual and other forms of violence in community life,³² which leads to public and private acceptance of violence and to not recognizing acts of physical and sexual violence as violence. As an explicit or implicit part of state assimilation policies, the residential/boarding school system has been identified as one of the main factors to continuing cycles of violence that originate from “a long series of losses experienced by students as a result of being removed from their families and communities.”³³ These losses include, *inter alia*, interpersonal and parenting skills, non-violent conflict resolution skills and knowledge of caring relationships.

International human rights standards, such as the Declaration of Belém do Pará (specifically Art. 4), could be employed as part of community level awareness and educational campaigns about the rights, personal integrity and human dignity of indigenous women and girls. Implemented this way, human rights standards can ultimately contribute to the restoration of the political, economic and spiritual roles of indigenous women in their communities.

Conclusion

The global human rights discourse has the potential for an effective framework to deal with violence against indigenous women especially when combined with local programs and initiatives that address the specific needs and circumstances of indigenous women and their communities. However, there are several challenges that need to be addressed in order for the human rights instruments to be effective tools in combating gendered violence, including complicated enforcement mechanisms, lack of accessibility, and a general unfamiliarity of the formal, legalistic paradigm of the international human rights framework.

Indigenous peoples’ rights and indigenous women’s rights need to be understood as belonging to a continuum in which one informs and reinforces the other. At the same time, indigenous women’s rights need to be considered a part of the larger framework of women’s rights in order not to lose sight of gendered forms of oppression. In the same way as indigenous peoples’ rights (as articulated in the UNDRIP) are not new rights but rather human rights articulated and interpreted in the specific context and circumstances of indigenous peoples, indigenous women’s rights are not distinct from women’s rights as a whole. In combating violence against indigenous women and girls, we need to bear

in mind that patriarchal social relations have systematic social consequences and consequently, there is a pressing need to focus on specifically gendered forms of violence. Nevertheless, indigenous women's rights require a nuanced articulation of human rights which has the capacity to recognize and encompass specific circumstances and which includes consideration of indigenous rights in general.

Moreover, such a human rights discourse necessitates an analysis of more fundamental structural factors that give rise to violence. In order to achieve long-term and lasting results, an essential element of addressing immediate physical, sexual and psychological violence against indigenous women and girls is confronting the structural factors such as poverty, marginalization, dispossession, and discriminatory policies that lead to circumstances of violence.

Finally, gender justice cannot be omitted from any discussion or project of indigenous self-determination. If indigenous self-determination is primarily a question of survival as distinct peoples, this survival must necessarily include women. Therefore, implementing indigenous self-determination requires recognizing and dismantling existing patriarchal social relations, eliminating any discriminatory policies and a concerted and continuous commitment to indigenous women's rights in all indigenous institutions at all levels.

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- ⁴ *Id.* at 160.
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¹² *Id.* at., at 56.

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¹⁴ *Id.* at 20.

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³⁰ KUOKKANEN, *supra* note, at 28. This is by no means limited to Sami society and examples can be found in other indigenous communities. (See, for example, CANADA, *Aboriginal Women and Family Violence*, 2008).

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